

Honorable Sally F. Olsen

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP COUNTY

CITY OF BREMERTON, a Washington
municipal corporation,

Plaintiff,

vs.

NATACHA SESKO,

Defendant.

Case No.: 07-2-01698-0

PLAINTIFF'S MOTION TO
CONTINUE TRIAL DATE AND
AMEND ORDER SETTING TRIAL
DATE AND CIVIL CASE EVENT
SCHEDULE

I. RELIEF REQUESTED

Plaintiff City of Bremerton requests that this Court enter an order continuing the trial date in this matter and amending the Order Setting Trial Date and Civil Case Event Schedule to continue the deadline for all case events pursuant to KCLCR 40(b)(6)(A)(vi).

II. STATEMENT OF FACTS

In July 2007 Plaintiff City of Bremerton filed this nuisance action against defendant Natacha Sesko related to her property situated in Bremerton, Washington. Declaration of Mark E. Koontz, Exhibit A ("Complaint"). The City alleges that the

1 property is being used as an illegal junkyard and in violation of City Codes and previous
2 orders issued in Kitsap County Superior Court Cause No. 97-2-01748-5 ("*Sesko I*"). *Id.*
3 *Sesko I*, which is still in litigation, has been litigated in the trial and appellate courts for
4 several years. *See City of Bremerton v. Sesko*, 2006 WL 2329467 (Wash.App.Div.2). On
5 February 13, 2008, this Court entered a Memorandum of Opinion in *Sesko I* after a trial
6 on the only remaining issue. Koontz Declaration, Exhibit B ("Memorandum of
7 Opinion"). Ms. Sesko appealed the judgment based on the Memorandum of Opinion to
8 the Court of Appeals, and on July 1, 2008 the Court of Appeals dismissed the appeal.
9 Koontz Declaration, Exhibit C ("Order Denying Appellants' Motion to Allow Late Filing
10 of a Notice of Appeal"). On July 31, 2008 Ms. Sesko filed a Petition for Review with the
11 Supreme Court seeking review of the Court of Appeals' dismissal. Koontz Declaration.
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13 In the case at bar ("*Sesko II*") the primary issue is the condition of Ms. Sesko's
14 property. *See Complaint*. In order to determine the condition of her property, the City
15 needs to have access to her property. In November 2007 the City began informal requests
16 for an inspection of the property at a time convenient for all parties. Koontz Declaration,
17 Exhibit D. Due to vacation and trial schedules, the parties were unable to agree on a
18 convenient time in 2007. On January 24, 2008, the City again requested a convenient
19 time for an inspection. Koontz Declaration, Exhibit E. The parties did not resolve this
20 issue in part because they were preparing for the hearing in *Sesko I*, which took place
21 January 29 through February 1, 2008. Koontz Declaration. The appellate filings, motions
22 and petitions in *Sesko I* took precedence over discovery in *Sesko II*. *Id.* After the City's
23 inspection of Ms. Sesko's property has been completed, the City anticipates additional
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1 discovery in the form of depositions, interrogatories, requests for production, and
2 retaining experts. *Id.*

3 The discovery cutoff in *Sesko II* is October 13, 2008. Koontz Declaration, Exhibit
4 F ("Case Event Schedule"). The trial date is February 9, 2009. *Id.* While the parties have
5 attempted to engage in discovery since November 2007, the litigation in *Sesko I* has taken
6 precedence and no discovery has been completed. Koontz Declaration. The City believes
7 that in order for the parties to complete discovery and be prepared for trial, the trial date
8 should be continued to the summer of 2009 and the other case events should also be
9 moved consistent with local rules. *Id.*

11 III. STATEMENT OF ISSUES

12 Whether the Court should grant the City's motion to continue the trial date when
13 there is good cause for doing so, specifically, that the parties likely will not be able to
14 complete discovery prior to the discovery cutoff and that the parties likely will not be
15 prepared for trial on the current trial date.

17 IV. EVIDENCE RELIED UPON

18 A. The Pleadings filed herein;

19 B. Declaration of Mark E. Koontz, with Exhibits:

- 20 1. Complaint (Exhibit A);
- 21 2. Memorandum of Opinion in Cause No. 97-2-01748-5 (Exhibit B);
- 22 3. Order Denying Appellants' Motion to Allow Late Filing of a Notice of
23 Appeal in Court of Appeals Division II Case No. 37574-5-II (Exhibit C);
- 24 4. Emails between City's counsel and Ms. Sesko's counsel in November 2007
25 (Exhibit D);
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- 1 5. Email from City's counsel to Ms. Sesko's counsel dated January 24, 2008
2 (Exhibit E); and
3 6. Order Setting Trial Date and Civil Case Event Schedule (Exhibit F).

4 **V. AUTHORITY**

5 KCLCR 40(b)(6)(A)(iv) authorizes this Court to amend any date set out in the
6 Order Setting Trial Date and Civil Case Event Schedule upon a showing of good cause by
7 any party:
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9 Upon motion of any party or the court, and upon good cause shown, the
10 preassigned judge may modify any date in the original Order Setting Trial
11 Date and Civil Case Event Schedule.

11 KCLCR 40(b)(6)(A)(iv).

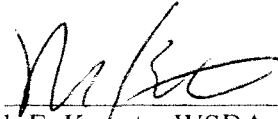
12 In our case, the City has shown good cause for a continuance of the trial date and
13 the other case events. Since January 2008, the parties have been actively engaged in
14 litigating Sesko I in this Court, in the Court of Appeals, and now in the Supreme Court.
15 The efforts involved in Sesko I have kept the parties from engaging in discovery in Sesko
16 II. Currently, counsel for the City is available for trial any date in July or August 2009. If
17 the trial date is continued to July or August 2009 and the other case events are set
18 pursuant to KCLCR 40(b)(6)(A)(vi), the parties should be able to complete discovery and
19 be prepared for trial.
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21 **VI. CONCLUSION**

22 There is good cause for continuing the trial date and other case events in the Order
23 Setting Trial Date and Civil Case Event Schedule. Therefore, this Court should grant the
24 City's motion and continue the trial date to a date convenient for the Court in July or
25 August 2009.
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1 DATED this 14th day of August, 2008.

2 ROGER A. LUBOVICH
3 Bremerton City Attorney

4 By: 
5 Mark E. Koontz, WSBA # 26212
6 Attorney for Plaintiff
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